

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LEA BENINCASA,)	
)	
Plaintiff,)	
)	Cause No.
v.)	
)	JURY TRIAL DEMANDED
FORUM HOME HEALTH AGENCY,)	
LLC,)	
)	
Defendant.)	

COMPLAINT

1. Plaintiff, Lea Benincasa, through her undersigned Counsel, hereby brings suit for reinstatement, damages and injunctive relief to redress the deprivation of rights secured to plaintiff by the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. and/or the Family And Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§ 2601 et seq, and/or the Missouri Human Rights Act, Mo. Rev. Stat. §§ 213.010 et seq.

2. The jurisdiction of the Court over this controversy is invoked pursuant to the provisions of 29 U.S.C. § 1331, 29 U.S.C. § 2617, 29 U.S.C. § 1343 (a) (4), 42 U.S.C. § 12117(a).

3. Plaintiff has received a Notice of Right to Sue issued by the U.S. Equal Employment Opportunity Commission and mailed on May 1, 2019. That Notice is attached hereto as Exhibit

1. This Complaint is being filed within 90 days of receipt of that Notice.

4. Plaintiff has received a Notice of Right to Sue issued by the Missouri Commission on Human Rights and mailed on April 29, 2019. That Notice is attached hereto as Exhibit 2. This Complaint is being filed within 90 days of receiving that Notice.

VENUE

5. The unlawful employment practices alleged below were committed within the State of Missouri. Accordingly, venue lies in the United States District Court for the Eastern District of Missouri under 29 U.S.C. § 1391(b).

PARTIES

6. The plaintiff is a citizen of the United States and a resident of the State of Missouri. Plaintiff is a person entitled to protection pursuant to the provisions of 42 U.S.C. § 12111(8), or alternatively or conjunctively, pursuant to 29 U.S.C. § 2611(2)(a) to be treated as an employee within the meaning of the FMLA.

7. The defendant, Forum Home Health Agency, LLC, is a Missouri organization, hereinafter referred to as defendant “Forum” or “Company”. Forum is an employer within the State of Missouri. The central office of Forum is 3828 Meramac Street, St. Louis, MO 63116. Defendant was the “employer” of plaintiff within the meaning of 29 U.S.C. § 2611(4)(a) at all times relevant to this action. Additionally, defendant was the “employer” of plaintiff within the meaning of 29 U.S.C. § 2611(4)(a) and 42 U.S.C. § 12102(5) (A). Furthermore, defendant was an “employer” within the meaning of the Missouri Human Rights Act, Mo Rev. Stat Sec. 213.010 et seq.

STATEMENT OF FACTS

8. At the time of termination of her employment, plaintiff was employed by Defendant as a medical biller. Prior to medical leave that began on March 5, 2018, plaintiff worked out of the central office as identified in numbered paragraph 7 above. At all times relevant herein, defendant employs at least 150 individuals.

9. Plaintiff was hired as a medical biller on or about September 21, 2014. Her employment was continuous up until the termination of her employment.

10. While employed, plaintiff's ending rate of pay was \$14.50 per hour. She also received Company-sponsored benefits not limited to medical insurance. She worked at least 40 hours per week.

11. Plaintiff suffers from Diabetes, and Company was aware that plaintiff suffered from this serious medical condition.

12. Because of her medical condition, plaintiff is required to submit for regular ophthalmologic examinations to monitor the exacerbation of visual and ocular symptoms caused by Diabetes. During a medical examination in December of 2017, an abnormality was discovered by plaintiff's physician, revealing masses behind her right eye and in the back of her head. Surgery was recommended to remove one of the masses behind plaintiff's right eye.

13. Upon such information as identified in numbered paragraph 12 above, plaintiff informed Company on January 8, 2018 that she had been diagnosed with a brain tumor and requested leave pursuant to the Family and Medical Leave Act. Plaintiff's request was approved leave began on March 5, 2018.

14. While on medical leave, plaintiff's job duties were shifted to co-worker Natalia (last name unknown).

15. On or about March 30, 2018, plaintiff submitted for a post-operation examination conducted by the surgeon who performed the surgery to remove the mass behind plaintiff's right eye. During that visit, plaintiff was informed by her surgeon that she would be released to return to work within in two weeks.

16. Upon such information as identified in numbered paragraph 14 above, plaintiff left a voicemail for office manager Edward Tsimerman to inform him of her anticipated return date. Tsimerman returned plaintiff's phone call on April 2, 2018. During that telephone conversation,

Tsimerman informed plaintiff that her employment was being terminated, effective immediately, because Natalia was now doing the billing, and that plaintiff's services were no longer needed.

COUNT I – Violation of the Americans with Disabilities Act

17. Plaintiff restates, realleges and reavers and hereby incorporates by reference any and all allegations of paragraphs 1 through 16 inclusive, herein. In addition, plaintiff alleges that defendant unlawfully and discriminatorily terminated or constructively terminated plaintiff's employment on account of her disability or disabilities and said actions violate the provisions of the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., justifying an award, inter alia, of back pay, front pay, interest, benefits, special damages, compensatory and punitive damages against said defendant.

COUNT II – Violation of the Family and Medical Leave Act

18. Plaintiff restates, realleges and reavers and hereby incorporates by reference any and all allegations of paragraphs 1 through 17 inclusive, herein. In addition, plaintiff alleges that defendant's unlawful termination or constructive termination of her employment violates the laws of the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. justifying an award, inter alia, of back pay, interest, special damages (if applicable), and any and all other damages that she is entitled to under law against defendant.

COUNT III – Violation of the Missouri Human Rights Act

19. Plaintiff restates, realleges and reavers and hereby incorporates by reference any and all allegations of paragraphs 1 through 18 inclusive, herein. In addition, plaintiff alleges that defendant's unlawful termination or constructive termination of her employment violates the laws of the Missouri Human Rights Act, as amended, 29 U.S.C. §§ 213.010 et seq. justifying an

award, inter alia, of back pay, interest, special damages (if applicable), and any and all other damages that she is entitled to under law against defendant.

WHEREFORE, plaintiff respectfully prays for judgment against defendant as follows:

- A. For a money judgment representing compensatory damages, including lost wages, past and future wages, all other sums of money, including any and all benefits and any other employment benefits together with interest on said amounts, in addition to tort damages;
- B. For a money judgment representing punitive damages for defendant's willful violations of law;
- C. For a money judgment representing prejudgment interest, if applicable;
- D. Reinstatement and restoration of benefits;
- E. For reasonable attorneys' fees, costs, and expenses;
- F. That this Court retain jurisdiction over this action until defendant has fully complied with the orders of this Court, and that this Court require defendant to file any and all reports necessary and to supervise compliance with law that any and all matters related hereto be done in conformance with the applicable ADA and FMLA provisions;
- G. For lost monies and damages pertaining to out-of-pocket expenses;
- H. For further, other, and additional relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff herein demands a trial by jury of all issues in this action.

Respectfully Submitted,

McMichael, Logan, & Schaeffer

By: /s/ J. Clayton Schaeffer
J. Clayton Schaeffer #MO67444
Attorney for Plaintiff
12166 Old Big Bend Rd., Suite 99
Kirkwood, MO 63122
(636) 532-1400 Office
(888) 823-1441 Facsimile
clay@mcmichael-logan.com